Federal Defenders OF NEW YORK, INC.

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David E. Patton
Executive Director

Southern District of New York Jennifer L. Brown Attorney-in-Charge

December 27, 2016

By ECF
Honorable Edgardo Ramos
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: <u>United States v. El Gammal</u> 15 Cr. 588 (ER)

Hon. Judge Ramos,

We write to the Court on three matters: (1) the government's partial production of the 3500 material for Tarek El Goarany; (2) our request for a 9:30 a.m. to 4:00 p.m. trial day; and (3) a renewal of our October motion to preclude expert testimony of government forensic experts Craig M. Roth and Mary F. Horvath.

3500 material for Tarek El Goarany

The government previously informed the Court it had produced 3500 material for Tarek El Goarany ahead of the December 30, 2016 deadline for the production of all 3500 material. Omitted from the government's production of 3500 material for this witness were 3501-16 and 3501-17 which the government has still have not provided to the defense, nor have they responded to our inquiry as to why those documents were not produced to the defense, and were omitted.

Additionally, since its initial production, the government had not responded (until day last week Friday) to our request that they augment their 3500 production, and now inform they will provide the remainder of the 3500 material on Tarek El Goarany on December 30, 2016 or

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earlier. We ask the Court to Order the government to do so now.

Trial Day

For many reasons, one of which is the delay in final translations, we respectfully request a 9:30 a.m. - 4:00 p.m. trial day. As the Court is aware, the defense has unique variables to juggle that are not faced by the government.

As it relates to translations, the government produced approximately 40 PDF files containing revised translations.² We learnt today these are not "final translations." We had provided to the government our disagreements with their prior attempts at translation (Marwan Abdul Rahman, an SDNY court certified translator has been working with us for months and at considerable cost), the government's recent batch of translated documents do not reflect Mr. Rahman's changes. Mr. Abdul Rahman is now traveling and will not return to work until early in 2017, and only then can he tell us if the government's most recent iterations are accurate, or require further revision. The government's new interpreter has not reviewed our expert translator's changes, and is working at it now. Additionally, this production of "final translations" does not identify the speakers / participants.

 $^{\rm 1}$ Attempts to reach agreement with the government on the issue of trial day were unsuccessful. We first asked the government to agree to a

trial schedule of 9:00 a.m. to 2:00 p.m. The government did not agree. We proposed a compromise of 9:30 to 4:00. The government did not respond.

 $^{^2}$ A copy of the government's production is available for the Court's review. As no discovery letter accompanied the production, we cannot attach it here. We are, if the court wishes, able to provide the government's production on a disc.

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A 9:30 a.m. to 4:00 p.m. schedule would allow for a full trial day and also accommodate the defense's need to consult and prepare for the next trial day. We ask the Court to adopt such a trial schedule.

The government's notice of expert witnesses

For months, the defense has demanded adequate notice relating to the government's forensic expert witnesses. To date the government has not complied. We hereby renew our October 17, 2016 letter motion to preclude Mr. Roth and Ms. Horvath from testifying.

The government has never provided a narrative, written summary with the conclusions or bases for either expert's testimony as required by Rule 16(b)(1)(C). Instead the government recently provided a copy of Mr. Roth's presentation which is indecipherable to us and is attached for the Court's review (along with the government's generalized cover letter). Additionally, the government informed us that they will provide a copy of Ms. Horvath's presentation, but has not done so yet. It is too late for the defense to retain a testifying expert to examine Mr. Roth and/or Ms. Horvath's conclusions and testify at a January 9 trial. For these reasons, the Court should grant our motion to preclude this testimony.

We thank the Court for its consideration of these three requests.

³ The Court overruled our request for a narrative summary relating to the testimony of Eric Perry, the government's cell site expert. The Court determined that Mr. Perry's PowerPoint presentation was sufficient. To the extent the government's cell site expert testifies to material issues not apparent from his presentation, we will lodge a renewed objection.

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Respectfully submitted,

/s/ Habib/Shroff/Miron Assistant Federal Defenders

cc: Govt counsel (via email)
 Mr. Ahmed M. El Gammal, (via mail)

Exhibit A



U.S. Department of Justice

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

December 23, 2016

By Email
Sabrina Shroff, Esq.
Daniel Habib, Esq.
Annalisa Miron, Esq.
Federal Defenders of New York
52 Duane Street, 10th Floor
New York, NY 10007

Re: <u>United States</u> v. <u>Ahmed Mohammed El Gammal</u>,

15 Cr. 588 (ER)

Dear Counsel:

We write in response to your December 8, 2016 letter in which you request further "expert notice about forensic analysis on the devices listed in the exhibit list" and demand additional information concerning conclusions to be offered by the Government's experts regarding particular data contained on these devices. As you are aware, we provided notice on October 3, 2016 that FBI Computer Forensic Examiner Craig M. Roth and FBI Senior Digital Forensic Examiner Mary F. Horvath will testify concerning their analysis of these electronic devices.

As an initial matter, we note that complete forensic extraction reports of the relevant devices were produced to you in discovery. The contents of those reports will comprise the basis for the testimony of the Government's two forensic experts. Specifically, Mr. Roth will testify concerning his analysis of a Toshiba laptop (GX-1) and two cellular phones (GX-2 and GX-4), and Ms. Horvath will testify concerning her analysis of an Apple iPad (GX-3). In order to provide you with additional information concerning the expected expert testimony of Mr. Roth, the Government attaches an initial draft PowerPoint presentation prepared by Mr. Roth that highlights the substance of his expected testimony (including his testimony concerning the videos which are referenced in your December 8 letter). Ms. Horvath has not yet prepared a similar draft presentation, but we will provide one to you as soon as it is available.

December 23, 2016

We remain available to answer any questions you have concerning the expected testimony of the Government's expert witnesses.

Very truly yours,

PREET BHARARA United States Attorney

By: /s/
Andrew J. DeFilippis
Brendan F. Quigley
Negar Tekeei
Assistant United States Attorneys
(212) 637-2231/2190/2482

Enclosures

Exhibit B

Toshiba Laptop

• 1B1





Registry - Windows Logon

Registry Information



Registry Report

$Microsoft \backslash Windows\ NT \backslash Current Version \backslash Winlogon$

Last Written Time 8/19/2015 10:34:19 UTC

Name	Туре	Data			
AutoRestartShell	REG_DWORD	0x00000001 (1)			
Background	REG_SZ	000			
CachedLogonsCount	REG_SZ	10			
DebugServerCommand	REG_SZ	no			
DisableBackButton	REG_DWORD	0x00000001 (1)			
EnableSIHostIntegration	REG_DWORD	0x00000001 (1)			
ForceUnlockLogon	REG_DWORD	0x00000000 (0)			
LegalNoticeCaption	REG_SZ	(value not set)			
LegalNoticeText	REG_SZ	(value not set)			
PasswordExpiryWarning	REG_DWORD	0x00000005 (5)			
PowerdownAfterShutdown	REG_SZ	0			
PreCreateKnownFolders	REG_SZ	{A520A1A4-1780-4FF6-BD18-167343C5AF16}			
ReportBootOk	REG_SZ	1			
Shell	REG_SZ	explorer.exe			
ShellCritical	REG_DWORD	0x00000000 (0)			
ShellInfrastructure	REG_SZ	sihost.exe			
SiHostCritical	REG_DWORD	0x00000000 (0)			
Userinit	REG_SZ	C:\Windows\system32\userinit.exe,			
VMApplet	REG_SZ	SystemPropertiesPerformance.exe /pagefile			
WinStationsDisabled	REG_SZ	0			
scremoveoption	REG_SZ	0			
ShutdownFlags	REG_DWORD	0x00000007 (7)			
EnableFirstLogonAnimation	REG_DWORD	0x00000001 (1)			
AutoLogonSID	REG_SZ	S-1-5-32			
LastUsedUsername	REG_SZ	(value not set)			
DisableCad	REG_DWORD	0x00000001 (1)			
AutoAdminLogon	REG_SZ	0			
DefaultUserName	REG_SZ	MicrosoftAccount elgammal44@yahoo.com			
ShutdownWithoutLogon	REG SZ	0			

Name	Type	Data		
AutoAdminLogon	REG_SZ	0		
DefaultUserName	REG_SZ	MicrosoftAccount\elgammal44@yahoo.com		
ShutdownWithoutLogon	REG_SZ	0		

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isis-massacre_wg_4	사용하다 하고 있는데 그는데 이번에 가는데 그런데 그렇게 하는데 그렇게 그렇게 하는데 그렇게 하는데 그렇게
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Logical Size	21182872 B
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SHA256 Hash	n/a
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Modified Date	2/21/2015 6:45:30 PM (2015-02-21 23:45:30 UTC)

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the state of the s	01/Basic data partition (4)/TI10700000B [NTFS]/[root]/Windows.old/Users/AHMED/AppData/Local/Microsoft/Windows/INetCache/Low/IE/F9EAAAU9 228268731 1586355924 n[1].mp4
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SHA1 Hash

SHA256 Hash Created Date

Accessed Date

Modified Date

Exported as

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iPhone 6 Plus

• 1B2





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✓ Last Used ICCID	89148000001846572609
▼ ICCID	89148000001846572609
▼ Phone Number	6236927880

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2					The state of the s		42F3901E-3EF7-4763-BA88-F3CE6A80AD90
3					elgammal44@yahoo.com	elgammal44@yahoo.com 28791330-E32E-41CB-8	
4					elgammal44@yahoo.com		6847419E-6358-4D53-AA35-511DCBA7350A
5					elgammal44@yahoo.com		B69DBCB9-B9EA-4A29-8B94-1209931B924F
6					jimmygammal@hotmail.com		5E12CB50-5FBE-486B-8E23-F882FC591396
7					elgammal44@yahoo.com		0C243118-0E45-4AEA-B340-BAD508DA0CC9
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9							WhatsApp
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15			24	Jammie Gammal		1	Facebook
16				Jim	+1 623-692-7880		Viber
17			9	Jimmy	16236927880@s.whatsapp.net	7024dd8e81be3173	WhatsApp







SMS Message Log

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Whatsapp Chat Log



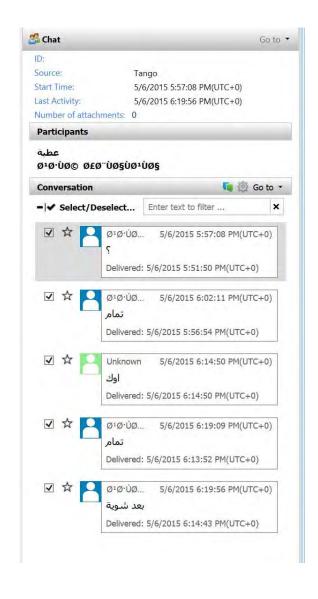


Whatsapp Chat Log





Tango Chat Log

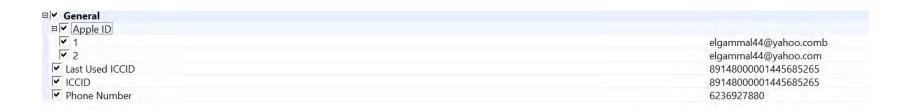


iPhone 5C

• 1B4





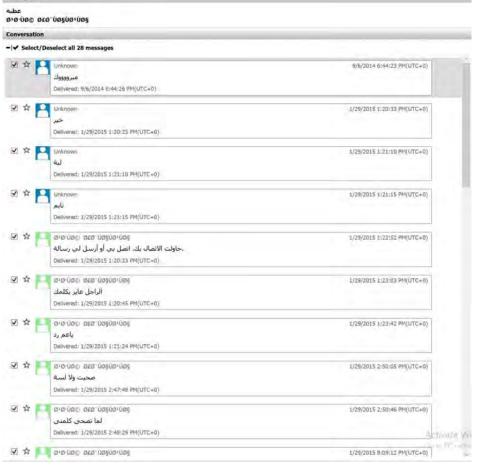


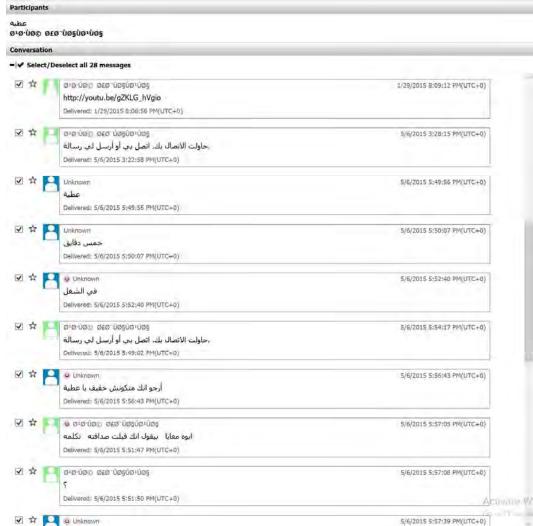
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	3					elgammal44@yahoo.com		D34D64B0-17F3-45		
	4						728d5a7c86f7ae12e	WhatsApp		
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	12					jimmygammal@hotmail.c		1A0FCA34-7BC9-4F		
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	15			A	Jammie Gammal			Facebook		Facebook user ID '1231043183' email address 'elgammal44@yahoo.com'
	16				Jimmy	16236927880@s.whatsap	d2ad6c4b486dd354	WhatsApp		

Call Log

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4	5				+18452839079	1/8/2015 2:10:22 AM(UTC+0)	00:07:01	Outgoing
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Tango Chat



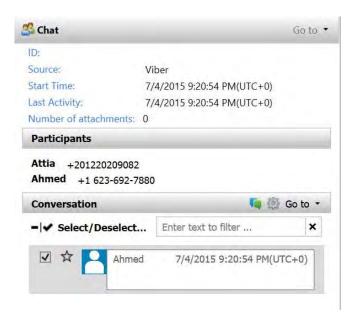


Tango Chat





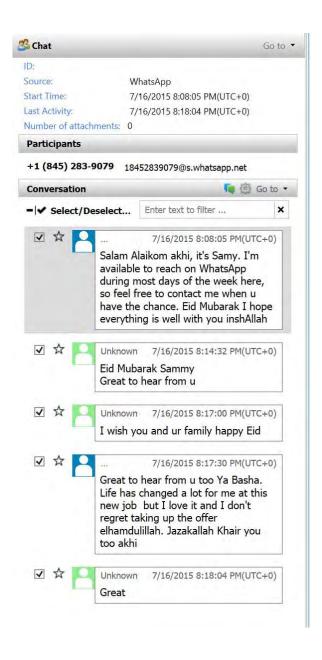
Viber Chat



Viber Chat



Whatsapp Chat



Whatsapp Chat





Whatsapp Chat



